BELLSOUTH TELECOMMUNICATIONS, INC.

SURREBUTTAL TESTIMONY OF JOHN A. RUSCILLI

BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

DOCKET NO. 2000-527-C

JANUARY 10, 2001

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS ADDRESS.

A. My name is John A. Ruscilli. I am employed by BellSouth as Senior Director for State Regulatory for the nine-state BellSouth region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. ARE YOU THE SAME JOHN RUSCILLI WHO FILED TESTIMONY IN THIS CASE ON DECEMBER 21, 2000?

A. Yes. I filed combined Direct/Rebuttal testimony including two exhibits.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to respond to the Mr. Gregory Follensbee's rebuttal testimony filed on behalf of AT&T Communications of the Southern States, Inc. ("AT&T") on January 5, 2001.

Issue 1: Should calls to Internet service providers be treated as local traffic for the purposes of reciprocal compensation? (Local Interconnection, Attachment 3)

Q. PLEASE RESPOND TO MR. FOLLENSBEE'S CONTENTION THAT ISP-BOUND TRAFFIC DOES NOT CONSTITUTE ACCESS SERVICE.

A. Although Mr. Follensbee is correct that "[t]he FCC has clearly stated that ISP-bound traffic is not subject to interstate access charges..." and "the FCC has expressly prohibited access charges being applied to this traffic," these facts do not negate the fact that ISP-bound traffic is access service. (Follensbee Rebuttal, page 2, lines 4-8). Indeed, as I explained in my direct testimony, the FCC has exempted enhanced service providers, of which ISPs are a subset, from paying access charges for their interstate access. Rather, these providers pay local business exchange rates for the access service they receive. There is an important point here. If a class of providers is exempted from paying access charges, then the obvious conclusion would be that the service being provided is, indeed, access service that would normally be subject to such charges – otherwise, what would be the reason for the exemption? Mr. Follensbee's contention that ISP-bound traffic is not access service because it has been exempted from access charges defies logic and really just makes no sense at all.

If ISP-bound traffic had not been exempted from access charges, then a call from a BellSouth end user to an ISP served by AT&T would result in BellSouth receiving originating access charges from AT&T. AT&T would

then recover its costs from the ISP, presumably by charging the ISP long distance rates per minute of use (rather than the flat-rate business exchange rates ISPs now pay). Since ISP-bound traffic is exempt from access charges, BellSouth receives no revenue when its end user originates a call through an ISP served by AT&T, but AT&T does receive revenue from the ISP. One cannot lose sight of the fact that the BellSouth end user is paying the ISP for his or her Internet access. In other words, when AT&T serves an ISP, and a BellSouth end user subscribes to Internet access from that ISP, two out of three service providers are being reimbursed for ISP-bound traffic. AT&T and the ISP are being reimbursed. BellSouth receives no revenues from its end user, from the ISP or from AT&T for this traffic. Therefore, Mr. Follensbee's attempt to persuade this Commission that, without reciprocal compensation on ISP-bound traffic, AT&T will be unable to cover costs it incurs to handle such calls originated by BellSouth's customers falls flat.

Q. PLEASE RESPOND TO MR. FOLLENSBEE'S ALLEGATION THAT "THE COMPETITIVE MARKET IN SOUTH CAROLINA WILL BE DAMAGED" AND THAT CLECs WILL BE SIGNALED TO "FOREGO SERVING ANY ISPs AS LOCAL CUSTOMERS" IF RECIPROCAL COMPENSATION IS NOT PAID FOR ISP-BOUND TRAFFIC. (FOLLENSBEE REBUTTAL, PAGE 2, LINES 20-22).

A. There are a couple of points I want to make in response to Mr. Follensbee's allegation. As a preliminary matter, one cannot be certain that the ISPs to which AT&T refers are actually located in South Carolina. One of the

switches that AT&T claims to be using to serve South Carolina is located in Charlotte, North Carolina. It is entirely possible that any ISPs being served by AT&T are not even physically located in South Carolina. However, assuming that AT&T is actually providing service to ISPs in South Carolina, the "damage" to which Mr. Follensbee refers is actually the damage to AT&T's pocketbook when it does not receive the windfall that would result from LECs paying reciprocal compensation for ISP-bound traffic.

Interestingly, it appears that the only market Mr. Follensbee finds worthy of competition in South Carolina is the ISP market. Indeed, Mr. Follensbee does not suggest that failure to receive reciprocal compensation on ISP-bound traffic will negatively impact the level of residential or business competition in South Carolina. It is difficult to imagine that Congress and the FCC intended for reciprocal compensation to create an incentive for CLECs such as AT&T to game the system and to serve a small, niche market, collecting as much money as possible from other LECs while avoiding competing for residential customers.

In fact, if reciprocal compensation were due on ISP-bound traffic, any incentive AT&T might have to serve residential customers would be lessened. First, if AT&T's residential customer originates lots of ISP-bound traffic to an ISP served by AT&T, AT&T would not receive any reciprocal compensation for this traffic. Second, if AT&T's residential customer originates lots of ISP-bound traffic to an ISP served by another LEC, AT&T would have to pay reciprocal compensation to that LEC. Obviously, having ISP-bound traffic be

subject to reciprocal compensation simply provides incentive for CLECs to primarily serve ISPs.

Issue 6: Under what rates, terms, and conditions may AT&T purchase network elements or combinations to replace services currently purchased from BellSouth's tariffs? (UNEs, Attachment 2)

Q. PLEASE RESPOND TO MR. FOLLENSBEE'S CONTENTION THAT TERMINATION CHARGES REPRESENT A "HUGE PENALTY" AND AN "UNJUSTIFIED WINDFALL." (FOLLENSBEE REBUTTAL, PAGE 8, LINES 17-19)

A. I disagree with Mr. Follensbee. As I explained in my direct testimony, when AT&T chose to pay the lower tariff rates, it also agreed to a volume and term commitment. Therefore, AT&T has received the benefit of paying the lower rates. Termination liabilities are an inherent part of the volume and term commitment. AT&T could have chosen to pay the higher month-to-month rates, and termination liabilities would not have been an issue.

Issue 7: How should AT&T and BellSouth interconnect their networks in order to originate and complete calls to end-users? (Local Interconnection, Attachment 3)

Q. DOES MR. FOLLENSBEE'S OFFER THAT AT&T WILL ESTABLISH TWO INTERCONNECTION POINTS ("IPs") IN EACH LATA RESOLVE THIS ISSUE?

A. Regrettably, it does not. First, Mr. Follensbee qualifies AT&T's offer when he says that if traffic volumes are insufficient, then AT&T will only establish one IP in each LATA. Second, let's assume that AT&T establishes two IPs in each LATA (say, in Columbia and in Orangeburg in the Columbia LATA), but AT&T also has end users in Newberry. BellSouth's position remains that, under AT&T's proposal, BellSouth would incur additional costs to transport calls from BellSouth's end users in Newberry to AT&T's end users in Newberry solely due to AT&T's choice of network architecture which requires that the call be transported from Newberry to AT&T's IP in Columbia.

Q. HAS MR. FOLLENSBEE ACCURATELY PORTRAYED THE DISAGREEMENT BETWEEN THE PARTIES ON THIS ISSUE?

A. No, he has not. First, let me be clear that BellSouth does not dispute that, for AT&T's originating traffic, AT&T may choose to establish only one IP per LATA. Based on Mr. Follensbee's testimony, AT&T agrees that it has the responsibility to pay BellSouth reciprocal compensation for the portions of BellSouth's network that are used to terminate AT&T's traffic when AT&T hands off traffic to BellSouth at that single point. Mr. Follensbee is, however, completely incorrect when he alleges that BellSouth's proposal requires AT&T to transport AT&T's originating traffic all the way to each BellSouth end office in each BellSouth local calling area. As I explained in my direct testimony, BellSouth's proposal does <u>not</u> require that AT&T bring its originating traffic to <u>each</u> BellSouth end office. AT&T can hand off its traffic

at a single point in the local calling area and BellSouth will transport and terminate that traffic to any other point in the local calling area.

The disagreement, however, involves originating traffic, not terminating traffic. Regarding BellSouth's originating traffic, Mr. Follensbee is correct that BellSouth's proposal is for AT&T to be responsible for transporting BellSouth's originating traffic from some point in the BellSouth local calling area to AT&T's switch. As I explained in my direct testimony, if a BellSouth end user in the Orangeburg local calling area originates a call to an AT&T end user in the Orangeburg local calling area, AT&T contends that BellSouth should bear the cost of transporting the call from the BellSouth end user in Orangeburg to AT&T's point of interconnection in Columbia. BellSouth's position is that the call is being transported out of the Orangeburg local calling area solely as a result of AT&T's network architecture. Again, this is where the parties disagree.

Interestingly, on page 2, lines 11-12 of his rebuttal, Mr. Follensbee states "[c]learly, the FCC did not intend for an ILEC to be able to utilize the network of another carrier without paying for such use." Of course, that is exactly what Mr. Follensbee is asking the Commission to permit AT&T to do. AT&T should bear the additional cost associated with its network design.

Q. THROUGHOUT HIS TESTIMONY, MR. FOLLENSBEE REFERS TO NUMEROUS COURT CASES THAT HE CONTENDS SUPPORT AT&T'S POSITION. CAN YOU COMMENT?

A. Since neither Mr. Follensbee nor myself are attorneys, it is probably inappropriate for us to do much more than comment as laypersons on these decisions. Indeed, any extensive discussion of legal cases is best left to the briefs. I understand, however, that there are cases that are contrary to AT&T's position such as *US West v. AT&T Communications*, 31 F. Supp.2d 839, 852 (D. Or. 1998), *reversed in part, vacated in part sub nom. US West v. AT&T*, 224 F.3d 1049 (9th Cir. 2000) and *US West v. Jennings*, 46 F. Supp. 2d 1004 (D. Az. 1999). I would note that the Oregon case was the one in which the FCC submitted an *amicus curiae* brief that AT&T holds out as supporting its position from time to time. Obviously the Oregon court must not agree with AT&T's interpretation, as it evidently did not adopt AT&T's position.

Mr. Follensbee has also cited the TSR Wireless case (*In re TSR Wireless, LLC, et. al., v. U.S. West*, FCC 00-194) as supporting his position. However, in that decision, the FCC said that local exchange companies were only required to deliver calls to wireless carriers without charge when the call was delivered to the wireless carrier within the Major Trading Area ("MTA"), which is the wireless carrier's equivalent of a local service area. Again, I am not an attorney, but simple logic tells me that if a local exchange carrier does not have to deliver a call to a wireless carrier free of charge outside the MTA (the wireless carrier's local service area), then it follows that BellSouth would not be required to deliver its local wireline traffic free of charge outside the local service area in which the call originates.

Q. PLEASE RESPOND TO MR. FOLLENSBEE'S CLAIM THAT BELLSOUTH HAS A "HIGHLY INTEGRATED NETWORK" RATHER THAN HAVING "SEPARATE" NETWORKS IN EACH BELLSOUTH LOCAL CALLING AREA.

A. Mr. Follensbee has mischaracterized my testimony on this point. I agree that BellSouth has a highly integrated network. I agree that BellSouth does not have separate switches solely dedicated to handling local, intraLATA and interLATA traffic. My point, however, was that, when a BellSouth end user in Orangeburg calls another BellSouth end user in Orangeburg, the call traverses BellSouth's local network in Orangeburg and does not extend beyond the physical boundaries of the Orangeburg local calling area.

In other words, the call path would start at the first end user's house and continue to the serving central office. Next, a couple of things could occur. If that central office has direct trunking to the second end user's serving central office, then the call would travel over those direct trunks to the second central office and then travel to the second end user's house. Conversely, if traffic levels have not justified direct trunking between these two central offices, the call would travel from the first central office to BellSouth's local tandem and would then be transported to the second central office for completion to the second end user's house. Again, my point is that this local call did not travel outside of the Orangeburg local calling areas. However, under AT&T's proposal, if the second end user is an AT&T customer, this same call would have to be transported to AT&T's point of interconnection in Columbia, and

AT&T avows that BellSouth should incur the cost of transporting the call outside the Orangeburg local calling area to AT&T's point of interconnection in Columbia. BellSouth disagrees.

Q. IS MR. FOLLENSBEE CORRECT IN HIS EXPLANATION OF HOW HE BELIEVES BELLSOUTH USES ITS LOCAL TANDEM SWITCHES?

A. No, he is incorrect. BellSouth's local tandems only serve the local calling area in which the local tandem is physically located. For example, BellSouth's local tandem located at Senate Street in Columbia performs local tandem functions for end offices in the Columbia local calling area. However, this local tandem does not perform local tandem functions for local calls in other local calling areas in the Columbia LATA such as Newberry, Orangeburg, etc. Indeed, there are numerous end offices in the other ten local calling areas in the Columbia LATA, and the Senate Street local tandem does not perform local tandem functions for calls in those ten local calling areas.

Mr. Follensbee states at page 16, lines 16-17 that "[i]n South Carolina, BellSouth has more local calling areas than it has local tandems." This is true, because not all local calling areas require a local tandem. When traffic volumes between the end offices in a local calling area are sufficient to justify direct trunking between those end offices, there is no need for a local tandem. Next, Mr. Follensbee claims that, because BellSouth has more local calling areas than it has local tandems, "BellSouth is routing some of its local traffic beyond the boundaries of its local calling areas." He is incorrect. Mr.

Follensbee is apparently operating under the erroneous assumption that BellSouth's local tandem in a particular LATA is directly connected to each end office in that LATA. This is not the case. Again, the local tandem only performs local tandem functions within the local calling area where the local tandem is physically located.

On page 17, lines 3-4 of his testimony, Mr. Follensbee states that "in the South Carolina LATA, BellSouth has established eleven basic local calling areas, collectively served by a single local tandem." I assume that he is actually referring to the Columbia LATA, and BellSouth does have eleven local calling areas in the Columbia LATA. However, he is incorrect when he alleges that all eleven local calling areas are served by one local tandem. As I explained above, the single local tandem located at Senate Street serves only the local calling area in which it is physically located, and does not serve the other ten local calling areas in the Columbia LATA.

Q. DOES BELLSOUTH'S POSITION ON THIS ISSUE REQUIRE AT&T TO REPLICATE BELLSOUTH'S NETWORK ARCHITECTURE?

A. No. As I explained in my direct testimony, AT&T can build out its network that way if it chooses, but it is not required to do so. AT&T can lease facilities from BellSouth or any other provider to bridge the gap between its network (that is, where it designates its Point of Interconnection) and each BellSouth local calling area. BellSouth will be financially responsible for transporting BellSouth's originating traffic to a single point in each local calling area.

However, BellSouth is not obligated to be financially responsible for hauling AT&T's local traffic to a distant point dictated by AT&T.

Q. PLEASE RESPOND TO MR. FOLLENSBEE'S CONTENTION THAT BELLSOUTH'S LOCAL EXCHANGE RATES COVER THE ADDITIONAL TRANSPORT COSTS THAT ARE CAUSED BY AT&T'S NETWORK DESIGN.

A. As I explained in my direct testimony, BellSouth's local exchange rates are intended to recover the cost of transporting calls throughout the same local calling area in which the call originates. Again, the area of disagreement between the parties occurs when a BellSouth end user in one local calling area calls an AT&T end user in the same local calling area, but AT&T wants BellSouth to haul the call to AT&T's distant point of interconnection. BellSouth's local exchange rates were never intended to cover these additional transport costs that result from AT&T's network design.

Q. PLEASE RESPOND TO MR. FOLLENSBEE'S CONTENTION THAT, BECAUSE BELLSOUTH HAS BEEN BEARING THE COSTS OF TRANSPORTING ITS ORIGINATING TRAFFIC OUTSIDE THE LOCAL CALLING AREA TO AT&T'S SWITCH, THAT THERE IS NO REASON TO CHANGE THE STATUS QUO. (FOLLENSBEE REBUTTAL, PAGE 30, LINE 21 – PAGE 31, LINE 7)

A. As AT&T is fully aware, there are portions of the original interconnection agreement that AT&T wants modified, and there are portions that BellSouth wants modified. The fact is that language in the first generation agreement resulted in BellSouth incurring unforeseen and, indeed, unwarranted costs as a result of AT&T's network design. It is certainly well within BellSouth's rights to attempt to rectify that situation.

Issue 9: Should AT&T be permitted to charge tandem rate elements when its switch serves a geographic area comparable to that served by BellSouth's tandem switch? (Attachment 3)

Q. DO YOU HAVE GENERAL COMMENTS ON MR. FOLLENSBEE'S REBUTTAL TESTIMONY ON THIS ISSUE?

A. Yes. To support AT&T's position on this issue, Mr. Follensbee continues to rely solely on the FCC's Rule 51.711(a)(3). Of course, as I explained in my direct testimony, it is inappropriate to consider this portion of the rule without also considering 51.711(a)(1). When reviewed in its entirety, it is clear that Rule 51.711 established two requirements that must be met before a CLEC is entitled to compensation at the tandem switching rate. The two requirements are that the CLEC's switch(es) must: 1) serve a comparable geographic area to that served by BellSouth's tandem switch(es) and 2) actually perform local tandem functions. BellSouth's position on this issue simply sets forth that each carrier be compensated for the functions that it actually provides, and for the geographic area it actually serves, not for functions its switches are

"capable" of providing and areas its switches are "capable" of serving. AT&T has not provided this Commission with any persuasive evidence that AT&T is due reciprocal compensation at the tandem switching rate.

Q. HOW DO YOU RESPOND TO MR. FOLLENSBEE'S CONTENTION THAT A CLEC, SUCH AS AT&T, COULD MAKE A SHOWING THAT ITS COSTS ARE HIGHER THAN THE ILECs?

A. First, I think that if a CLEC such as AT&T thought that it was being short-changed by using the ILEC's costs as a proxy rate, the CLEC would file its own cost study demonstrating that its costs are higher in order to receive the higher rate. Of course, the CLEC would also be obligated to show that its network is efficient. Second, I find it interesting that, while Mr. Follensbee extols AT&T's network as being different from, but comparable to, BellSouth's network, he admits that, in the early stages, a CLEC's local network enjoys "nowhere near the ubiquity" that BellSouth's network does. The simple fact is that AT&T wants to be paid for tandem switching even though: (1) AT&T does not have a tandem switch, (2) AT&T's network does not perform the functions of a tandem switch, and (3) AT&T's end office switches have "nowhere near the ubiquity" of BellSouth's network.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

#242326

STATE OF SOUTH CAROLINA)
) CERTIFICATE OF SERVICE
COUNTY OF RICHLAND)

PERSONALLY APPEARED before me, Nyla M. Laney, who, being duly sworn, deposes and says that she is employed by the Legal Department for BellSouth Telecommunications, Inc. and that she has caused the Surrebuttal Testimony of John A. Ruscilli in connection with Docket No. 2000-527-C to be served this January 10, 2001 by the method indicated below each addressee listed:

Gene Coker
AT&T Communications of the Southern States, Inc.
1200 Peachtree Street
Suite 8100
Atlanta, Georgia 30309
(Via Facsimile & U. S. Mail)

Florence P. Belser, Esquire
Staff Attorney
Public Service Commission of SC
Post Office Drawer 11649
Columbia, South Carolina 29211
(Via Hand Delivery)

Francis P. Mood, Esquire
Steve A. Matthews, Esquire
Sinkler & Boyd
1426 Main Street, Suite 1200
Columbia, South Carolina 29211
(Via Hand Delivery)

Nyla M. Laney